

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
02-CA-232940	12/17/18

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer District Council 1707, AFSCME		b. Tel. No. (212)219-0022
		c. Cell No.
d. Address (street, city, state ZIP code) 420 W 45th St, New York, NY 10036-3501	e. Employer Representative (b) (6), (b) (7)(C)	f. Fax No.
		g. e-Mail
		h. Dispute Location (City and State) New York, NY
i. Type of Establishment (factory, nursing home, hotel) Labor Organization	j. Principal Product or Service Social Agency	k. Number of workers at dispute location 20

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a)(3) and (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On (b) (6), (b) (7)(C), 2018, the Employer discriminated against employee (b) (6), (b) (7)(C) by discharging (b) (6), (b) (7)(C) in order to discourage union activities or membership.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

(b) (6), (b) (7)(C)	
4a. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

(b) (6), (b) (7)(C)		Tel. No. (b) (6), (b) (7)(C)
the statements are true to the best of		Office, if any, Cell No.
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C) Individual	Fax No.
(signature of representative or person making charge)	Print Name and Title	e-Mail
Address (b) (6), (b) (7)(C)	Date:	
(b) (6), (b) (7)(C)		

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlr.gov
Telephone: (212)264-0300
Fax: (212)264-2450

February 26, 2019

(b) (6), (b) (7)(C)

Re: District Council 1707, AFSCME
Case 02-CA-232940

District Council 1707, Professional
Employees Union
(District Council 1707, AFSCME)
Case 02-CB-232941

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charges that District Council 1707 AFSCME and District Council 1707, Professional Employees Union have violated the National Labor Relations Act.

Decision to Dismiss: You claim that the above Union, as your Employer, unlawfully discharged you because you contemplated running in an election for its (b) (6), (b) (7)(C) position. While you maintain that your conduct is protected under the Act, it is not. The Act does not protect employees who engage in activities that are designed to influence or produce changes in the management hierarchy where they work. Therefore, your contemplation to run for the Union-Employer's (b) (6), (b) (7)(C) position appears to be conduct intended to change the management hierarchy, which is not protected. Accordingly, the Union's decision to discharge you for this reason is not a violation under the Act.

Although not specifically alleged in your charge, you also claim that in (b) (6), (b) (7)(C) 2018, you contemplated a run for (b) (6), (b) (7)(C) with the Union. While that conduct is protected union activity, the evidence fails to show that the Union-Employer discharged you for that reason. In this regard, the evidence fails to show that there is a connection between your protected activity and the Employer's decision to discharge you. In addition, there is no evidence that the Union-Employer had any knowledge of your protected activity or displayed an animus toward your union activity.

In your charge against the Union, you claim that the above Union failed and refused to file and process a grievance regarding your discharge by the Union-Employer. The evidence, however, shows that a grievance was filed on your behalf and was investigated by the Union. During that investigation, it was determined that you were discharged while on probation and that pursuant to the Union's collective-bargaining agreement, the Union did not have any recourse to pursue a grievance on behalf of a probationary employee. Therefore, the Union did not process your grievance to arbitration. The evidence further fails to show that the Union

displayed any animosity toward you or that it handled your grievance in an arbitrary, perfunctory or discriminatory manner. Under these circumstances it appears that the Union's decision not to process your grievance further was not based on unlawful considerations.

You further maintain that you were not a probationary employee at the time you were discharged since you were not a new employee when you became (b) (6), (b) (7)(C) for the Union-Employer. Rather, you claim you were promoted from (b) (6), (b) (7)(C) position to (b) (6), (b) (7)(C) position in (b) (6), (b) (7)(C) 2018 and that there was no extension of a probationary period in your new position. The evidence, however, shows that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) positions are in two separate bargaining units with two separate collective-bargaining agreements. When you transferred into the (b) (6), (b) (7)(C) position, new terms and conditions of employment, including a six-month probationary period, applied to you under the Union contract. Therefore, you were on probation at the time of your discharge in (b) (6), (b) (7)(C) 2018. Although you claim that the Union's contract, including the probationary period, was not valid since the contract was not ratified by its members, the evidence is insufficient to support such a claim. Accordingly, inasmuch as the investigation fails to establish that the Union-Employer and the Union have violated the Act, I am dismissing your charges.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

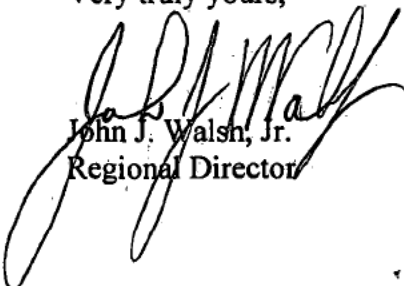
Appeal Due Date: The appeal is due on **March 12, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **March 11, 2019**. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the

appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 12, 2019**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **March 12, 2019, even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,


John J. Walsh, Jr.
Regional Director

Enclosure

cc: District Council 1707, AFSCME
Attn: (b) (6), (b) (7)(C)
420 West 45th Street
New York, NY 10036-3501

Thomas M. Murray, Esq.
Cohen, Weiss & Simon, LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869

District Council 1707, Professional Employees Union
Attn: (b) (6), (b) (7)(C)
420 West 45th Street
New York, NY 10036-3501